

GLENDY TOLBERT, JR.,

PLAINTIFF,

vs.

CRETE CARRIER CORPORATION
D/B/A SHAFFER TRUCKING
AND JOHN DOE,

DEFENDANTS.

CASE NO.: 3:21-cv-5099

Pursuant to 28 U.S.C. §§ 1441 and 1446, Defendant Crete Carrier Corporation files this Notice of Removal of this case from the Circuit Court of Jasper County, Missouri, and Defendant's short and plain statement of the grounds for removal is as follows:

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2. Defendant Crete Carrier Corporation is not a resident or citizen of the State of Missouri but is a corporation organized under the laws of the State of Nebraska with its principal place of business in Lincoln, Nebraska.

3. For purposes of removal of this action, the citizenship of John Doe defendants is disregarded. 28 U.S.C. §1441(b).

4. Any civil action filed in state court over which the federal district courts would have original jurisdiction may be removed. 28 U.S.C. § 1441(a). This lawsuit arises out of an accident which occurred in Missouri in which Plaintiff alleges negligence and seeks damages which are reasonably understood, in totality and from a fair reading of Plaintiff's Complaint, to be in excess of the jurisdictional limit. See Exhibit A, Complaint, ¶ 10 (Plaintiff seeks damages for "physical pain and mental anguish" suffered in the past and likely to be suffered in the future; for "loss of earnings" suffered in the past and likely to be suffered in the future; for "reasonable and necessary medical expenses" incurred in the past and likely to be suffered in the future; and "past and future physical disfigurement . . . and impairment").

5. This matter is removable because this Court has original subject matter jurisdiction on diversity grounds pursuant to 28 U.S.C. § 1332(a)(1) and (2).

A. The Matter is Between Citizens of Different States.

6. Complete diversity of citizenship exists between Plaintiff and Defendant Crete Carrier Corporation.

7. Plaintiff Glendy Tolbert, Jr. is a resident and citizen of the State of Texas. See Exhibit A, Complaint, ¶ 1.

8. Defendant Crete Carrier Corporation is a corporation organized under the laws of the State of Nebraska with its principal place of business in Lincoln, Nebraska, and therefore, is not a resident or citizen of the State of Missouri pursuant to 28 U.S.C. §1332(c)(1).

9. The citizenship of John Does A-G is irrelevant for removal purposes and should be disregarded. 28 U.S.C. §1441(b)(1).

B. Notice Of Removal Was Filed Within The 30-Day Limit Required By 28 U.S.C. § 1446(b) And All Procedural Requirements Have Been Met.

10. As noted herein, Plaintiff's Complaint was filed on November 1, 2021, and Defendant Crete Carrier Corporation was served with Plaintiff's Complaint on or about November 5, 2021.

11. This notice was timely filed within 30 days of Defendant Crete Carrier Corporation's acceptance of service of the Complaint, as required by 28 U.S.C. §1446(b), for timely removal.

12. Defendant Crete Carrier Corporation has complied with all applicable requirements and procedures for removal set forth in 28 U.S.C. § 1446, and Defendant is hereby giving prompt notice of this Removal to the Plaintiff, Glendy Tolbert, Jr., and to the Circuit Court of Jasper County, Missouri by filing a copy of this Notice of Removal with the Circuit Court.

C. The Amount In Controversy Exceeds \$75,000.00, Exclusive Of Interests and Costs, As Required by 28 U.S.C. § 1332(a).

13. Plaintiff's Complaint reasonably can be read as seeking damages in excess of \$75,000 where Plaintiff's Complaint alleges the following:

- a. physical pain and mental anguish sustained by the plaintiff from the date of the injury to the time of trial.
- b. physical pain and mental anguish that plaintiff will suffer in the future;

- c. loss of earnings sustained by plaintiff from the date of injury to the time of trial;
- d. loss of earnings and earning capacity reasonably anticipated to be suffered by plaintiff in the future;
- e. reasonable and necessary medical expenses incurred by plaintiff in the treatment of plaintiff's injuries from the date of the injury to the time of trial.
- f. reasonable and necessary medical expenses reasonably anticipated to be sustained by plaintiff in the future for treatment of plaintiff's injuries;
- g. past and future physical disfigurement; and
- h. past and future physical impairment.

See Exhibit A, Complaint, ¶ 10

14. Although Plaintiff's Complaint makes no specific monetary demand, a fair reading of the Complaint points to the conclusion that plaintiff is seeking damages in excess of the jurisdictional requirement of \$75,000. 28 U.S.C. §1332(a). See Kopp v. Kopp, 280 F.3d 883 (8th Cir. 2002); McGuire v. J.B. Hunt Transport, Inc., 2010 WL 2399550 (E.D. Mo.); Fainer v. State Farm Mut. Auto. Ins. Co., 2009 WL 911724 (E.D. Mo.).

15. Pursuant to the provisions of 28 U.S.C. §1441(a), the United States District Court for the Western District of Missouri, Southwestern Division, is the federal district court for the district embracing the place where the state court suit is pending.

16. This Court has original jurisdiction of this matter on the basis of diversity and removal to this Court is proper. 28 U.S.C. § 1332.

DEMAND FOR A JURY TRIAL

17. Defendant Crete Carrier Corporation demands a trial by jury on all issues triable by a jury herein.

CRETE CARRIER CORPORATION,
Defendant

J. Barrett Deacon (MO Bar 54733)
MAYER LLP
2434 E. Joyce Blvd, Suite 6
Fayetteville, AR 72703
(479) 396-2060 – phone
(479) 396-2059 – fax
bdeacon@mayerllp.com

By: /s/ J. Barrett Deacon
Attorneys for Crete Carrier Corporation

CERTIFICATE OF SERVICE

I, Barrett Deacon, hereby certify that on this 2nd day of December 2021, I have filed the foregoing with the CM/ECF filing system which sends a notification of this filing to the following attorneys of record that are registered for CM/ECF filings. The pleading will be delivered by electronic mail to any non-registered attorney of record.

Mark B. Levin
Nava Law Group, P.C.
4909 Bissonnet St., Suite 100
Bellaire, Texas 77401
mlevin@navalawgroup.com

Andrew S. Buchanan
James. V. O'Brien
1105 E. 32nd Street, Suite 5
Joplin, Missouri 64804
abuchanan@bwoattorneys.com
jobrien@bwoattorneys.com

/s/ J. Barrett Deacon
J. Barrett Deacon



IN THE 29TH JUDICIAL CIRCUIT, JASPER COUNTY, MISSOURI

Judge or Division: GAYLE L CRANE	Case Number: 21AO-CC00329	<div style="border: 1px solid black; padding: 5px; text-align: center;"> FILED Melissa Holcomb - Clerk 11/2/2021 JASPER COUNTY CIRCUIT COURT JOPLIN, MISSOURI </div>
Plaintiff/Petitioner: GLENDY TOLBERT JR	Plaintiff's/Petitioner's Attorney/Address ANDREW STONE TAYLOR BUCHANAN 2240 S BRENTWOOD BRENTWOOD, MO 63144	
Defendant/Respondent: CRETE CARRIER CORPORATION ET AL	Court Address: 601 S. Pearl JOPLIN, MO 64801	
Nature of Suit: CC Pers Injury-Vehicular		

(Date File Stamp)

Summons in Civil Case

The State of Missouri to: CRETE CARRIER CORPORATION D/B/A SHAFFER TRUCKING

REG AGT: NATIONAL REGISTERED AGTS
120 SOUTH CENTRAL AVENUE, STE 400
CLAYTON, MO 63105

COURT SEAL OF



JASPER COUNTY

You are summoned to appear before this court and to file your pleading to the petition, a copy of which is attached, and to serve a copy of your pleading upon the attorney for plaintiff/petitioner at the above address all within 30 days after receiving this summons, exclusive of the day of service. If you fail to file your pleading, judgment by default may be taken against you for the relief demanded in the petition.

02-NOV-2021

Melissa Holcomb – Circuit Clerk

/S/Dana J. Attwood, D.C.

Date

Deputy Clerk

Further Information:

Sheriff's or Server's Return

Note to serving officer: Summons should be returned to the court within 30 days after the date of issue.

I certify that I have served the above summons by: (check one)

- ☐ delivering a copy of the summons and a copy of the petition to the defendant/respondent.
- ☐ leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the defendant/respondent with _____, a person of the defendant's/respondent's family over the age of 15 years who permanently resides with the defendant/respondent.
- ☐ (for service on a corporation) delivering a copy of the summons and a copy of the complaint to: _____ (name) _____ (title).
- ☐ other: _____

Served at _____ (address)
in _____ (County/City of St. Louis), MO, on _____ (date) at _____ (time).

Printed Name of Sheriff or Server

Signature of Sheriff or Server

Must be sworn before a notary public if not served by an authorized officer:

Subscribed and sworn to before me on _____ (date).

(Seal)

My commission expires: _____

Date

Notary Public

Sheriff's Fees, if applicable

Summons	\$ _____
Non Est	\$ _____
Sheriff's Deputy Salary	
Supplemental Surcharge	\$ 10.00
Mileage	\$ _____ (_____ miles @ \$. _____ per mile)
Total	\$ _____

A copy of the summons and a copy of the petition must be served on **each** defendant/respondent. For methods of service on all classes of suits, see Supreme Court Rule 54.

IN THE CIRCUIT COURT OF THE COUNTY OF JASPER
AT JOPLIN, MISSOURI

GLENDY TOLBERT, JR.

Plaintiff

vs.

CRETE CARRIER CORPORATION
D/B/A SHAFFER TRUCKING

**SERVE: Registered Agent,
National Registered Agents, Inc.
120 South Central Avenue, Suite 400
Clayton, MO 63105**

and

JOHN DOE

Defendants.

CAUSE NO.:

JURY TRIAL DEMANDED

PETITION FOR PERSONAL INJURY

COME NOW Plaintiff Glendy Tolbert, Jr., by and through counsel of record, and for his
Petition against Defendant Crete Carrier Corporation d/b/a Shaffer Trucking and John Doe
Defendant, allege and state as follows:

PARTIES

1. Plaintiff is a resident of Fort Bend County, Texas.
2. **JOHN DOE DEFENDANT** is an individual whose identity, at the time of the filing
of this Original Petition, is unknown to Plaintiff. Once discovery has been undertaken, Plaintiff will
amend this petition and substitute the correct name in place of the pseudonym and seek appropriate
service of process thereafter. Until the identity of this individual has been ascertained Plaintiff will
proceed against said Defendant under a pseudonym.

3. Defendant **CRETE CARRIER CORPORATION D/B/A SHAFFER TRUCKING** is a Foreign For-Profit Corporation who may be served by serving its Registered Agent: National Registered Agents, Inc. at 120 South Central Avenue, Suite 400, Clayton, MO 63105.

FACTS COMMON TO ALL COUNTS

4. On or about November 7, 2018, Plaintiff was sleeping in the berth of his tractor trailer at a private truck stop in Joplin, Missouri. At the time in question, **JOHN DOE DEFENDANT** was operating an 18-wheeler when he made a wide turn and struck Plaintiff's vehicle resulting in serious and disabling injuries to the Plaintiff.

5. At such time, **JOHN DOE DEFENDANT** was working in the course and scope of his employment with **CRETE CARRIER CORPORATION D/B/A SHAFFER TRUCKING**.

6. On information and belief, **JOHN DOE DEFENDANT** was incompetent to drive a commercial motor vehicle by reason of age, inexperience, habitual recklessness or otherwise.

7. **CRETE CARRIER CORPORATION D/B/A SHAFFER TRUCKING** had reason to know of **JOHN DOE DEFENDANT**'s incompetence.

8. **CRETE CARRIER CORPORATION D/B/A SHAFFER TRUCKING** entrusted the subject vehicle to **JOHN DOE DEFENDANT**.

9. At the time of the accident made the basis of this suit, **JOHN DOE DEFENDANT** was operating the aforementioned vehicle in a negligent and careless manner in the following respects which, among others, may be shown at the trial of this cause:

- a. In failing to keep a proper lookout;
- b. In failing to yield;
- c. Driver inattention; and
- d. In failing to operate the vehicle in a reasonable and prudent manner.

10. Each of these acts and omissions, singularly or in combination with others, constitute negligence which was the proximate cause of this incident, and the injuries sustained by the Plaintiff, including but not limited to:

- a. The physical pain and mental anguish sustained by Plaintiff from date of injury to the time of trial;
- b. The physical pain and mental anguish that Plaintiff will suffer in the future;
- c. Loss of earnings sustained by Plaintiff from date of injury to time of trial;
- d. Loss of earnings and earning capacity reasonably anticipated to be suffered by Plaintiff in the future;
- e. Reasonable and necessary medical expenses incurred by Plaintiff in the treatment of Plaintiff's injuries from date of injury to time of trial;
- f. Reasonable and necessary medical expenses reasonably anticipated to be sustained by Plaintiff in the future for treatment of Plaintiff's injuries;
- g. Past and future physical disfigurement; and
- h. Past and future physical impairment;

COUNT I NEGLIGENCE

11. Plaintiff incorporates herein by reference the allegations in paragraphs 1 through 10, above.

12. The above-described collision was proximately caused by the negligence of Defendant **CRETE CARRIER CORPORATION D/B/A SHAFFER TRUCKING** as a result of its negligent entrustment of the subject vehicle to **JOHN DOE DEFENDANT** when they knew or should have known that he was not a safe driver.

13. **JOHN DOE DEFENDANT** was an agent and/or servant of Defendant **CRETE CARRIER CORPORATION D/B/A SHAFFER TRUCKING**. As such, Defendant **CRETE CARRIER CORPORATION D/B/A SHAFFER TRUCKING** is responsible for the conduct of

JOHN DOE DEFENDANT due to the master-servant relationship which existed, and under the doctrine of Respondeat Superior.

JURY DEMAND

Plaintiff demands jury on all claims asserted herein.

WHEREFORE, Plaintiff prays for a joint and several judgment against Defendants in an amount that is fair and reasonable for his damages, costs of Court, pre-judgment and post-judgment interest at the legal rate, and demand for judgment for all other relief deemed just and proper.

Respectfully submitted,

NAVA LAW GROUP, P.C.

/s/ Mark B. Levin

MARK B. LEVIN, of Counsel

(Pro hac vice pending)

SBN: 12254020

4909 Bissonnet St., Suite 100

Bellaire, Texas 77401

713/661-9900

713/666-5922 Facsimile

Email: Mlevin@navalawgroup.com

BUCHANAN, WILLIAMS & O'BRIEN, P.C.

/s/ Andrew S. Buchanan

Andrew S. Buchanan, #53824

James V. O'Brien, #31161

1105 E. 32nd Street, Suite 5

Joplin, MO 64804

Telephone: 417-623-8220

FAX: 417-781-9706

Email: abuchanan@bwoattorneys.com

Email: jobrien@bwoattorneys.com

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21AO-CC00329 - GLENDY TOLBERT V CRETE CARRIER CORPORATION ET AL (E-CASE)

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Display Options:

11/04/2021

Motion Filed

Application for special admission Pro Hac Vice. Sent to Judge for review.

Filed By: ANDREW STONE TAYLOR BUCHANAN

On Behalf Of: GLENDY TOLBERT JR

11/02/2021

Summons Issued-Circuit

Document ID: 21-SMCC-673, for CRETE CARRIER CORPORATION D/B/A SHAFFER TRUCKING. Summons issued to Attorney for service upon defendant. dja

Order - Special Process Server

Order for special process server. dja

11/01/2021

Filing Info Sheet eFiling

Filed By: ANDREW STONE TAYLOR BUCHANAN

Confidential Address Filed

Confidential information sheet.

Filed By: ANDREW STONE TAYLOR BUCHANAN

On Behalf Of: GLENDY TOLBERT JR

Proposed Order Filed

Proposed Order for special process server.

Filed By: ANDREW STONE TAYLOR BUCHANAN

Motion Special Process Server

Motion for special process server.

Filed By: ANDREW STONE TAYLOR BUCHANAN

Pet Filed in Circuit Ct

Petition.

Filed By: ANDREW STONE TAYLOR BUCHANAN

Judge Assigned